

ESTTA Tracking number: **ESTTA156211**

Filing date: **08/10/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	American Essentials Inc.
Granted to Date of previous extension	08/12/2007
Address	358 Fifth Avenue, Suite 202 New York, NY 10001 UNITED STATES

Attorney information	Stephen M. O'Neill Damon & Morey LLP 298 Main Street, 1000 Cathedral Place Buffalo, NY 14202 UNITED STATES soneill@damonmorey.com Phone:716 858 3865
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Applicant Information

Application No	78744586	Publication date	02/13/2007
Opposition Filing Date	08/10/2007	Opposition Period Ends	08/12/2007
Applicant	Saramar, L.L.C. 10 South Riverside Plaza Chicago, IL 60606 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. All goods and services in the class are opposed, namely: Insoles for footwear; non-slipping devices for shoes; shoe inserts for primarily non-orthopedic purposes; heel inserts for footwear; socks and stockings

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
The mark is merely descriptive	Trademark Act section 2(e)(1)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	599382	Application Date	10/20/1952
Registration Date	12/14/1954	Foreign Priority Date	NONE
Word Mark	HAPPY FOOT		

Design Mark	
Description of Mark	NONE
Goods/Services	Class U039 (International Class 025). First use: First Use: 1937/01/02 First Use In Commerce: 1937/01/02 KNITTED GOODS-NAMELY, SOCKS FOR MEN, WOMEN, BOYS, AND GIRLS

Attachments	71636955#TMSN.gif (1 page)(bytes) Notice_of_Opposition_Feet_Stay_Happy.pdf (4 pages)(16478 bytes)
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Signature	/Stephen M. O'Neill/
Name	Stephen M. O'Neill
Date	08/10/2007

AMERICAN ESSENTIALS INC.,)	
)	
Opposer,)	Opp. No. _____
v.)	
)	Serial No. 78/744586
SARAMAR, L.L.C.,)	
)	Mark: FEET STAY HAPPY IN
Applicant.)	BEAUTIFUL SHOES
)	

Opposer, American Essentials Inc., a New York corporation with a principle place of business located at 358 Fifth Avenue, Suite 202, New York, New York 10001, believes that it will be damaged by registration of the mark shown in Serial No. 78/744586, and hereby opposes the same.

As grounds for opposition, it is alleged that:

1. Opposer is the owner of U.S. Trademark Registration No. 599,382 for the mark
HAPPY FOOT for knitted goods – namely, socks for men, women, boys, and girls in
International Class 25, which was registered on the Principal Register on December
14, 1954. Said registered mark of Opposer is valid and subsisting and is conclusive
evidence of Opposer's exclusive right to use said mark in commerce on the goods
specified in said registration.
2. In view of the similarity of the respective marks, the related nature of the goods of the
respective parties, and the identical, related or overlapping nature of the channels of
trade of the respective parties, it is alleged that Applicant's mark so resembles
Opposer's registered mark, as to be likely to cause confusion, or to cause mistake, or
to deceive.
3. Applicant's mark consists of a combination of words which, when applied to the
goods of Applicant, is merely descriptive under Section 2(e)(1) of the Trademark Act,
15 U.S.C. Section 1052(e)(1), in that said mark describes an ingredient, quality,
characteristic, function, feature, purpose or use of the goods identified in the
application.
4. Opposer, its predecessors, affiliates, and/or related companies since at least as early
as 1937 have been involved in the manufacture and sale of clothing and knitted
goods, including, but not limited to socks and stockings and other goods which are of
a related nature to Applicant's goods, and which Opposer has a valid and legal right
to describe by use of the term sought to be registered by the Applicant.

5. Opposer is likely to be damaged by registration of said combination of words in that the *prima facie* effect of such registration will tend to impair Opposer's right to descriptive use of said words.
6. Applicant's alleged mark does not function to identify Applicant's goods and distinguish them from those offered by others.
7. Applicant's mark is nothing more than a slogan of a nature that is incapable of serving the function of identifying Applicant's goods and distinguish them from those offered by others.
8. Upon information and belief, Applicant did not use in commerce the mark shown in the Application before the filing of the same and has not used said mark in commerce since.
9. In view of the above allegations, Applicant is not entitled to federal registration of its alleged mark in that Applicant is not entitled to exclusive use of said combination of words in commerce on the goods specified.

WHEREFORE, Opposer prays that said Application Serial No. 78/744586 be rejected, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

POWER OF ATTORNEY

Opposer hereby appoints **STEPHEN M. O'NEILL**, Damon & Morey LLP, 1000 Cathedral Place, 298 Main Street, Buffalo, New York 14202-4096, telephone number: (716) 858-3865, facsimile: (716) 856-5537, e-mail address: soneill@damonmorey.com, as its attorney herein, with full power to prosecute said opposition, to transact all relevant business with the

Patent and Trademark Office and in the United States courts and to receive all official communications in connection with this opposition.

Dated: August 10, 2007

Respectfully submitted,
AMERICAN ESSENTIALS INC.

By: /s/ Stephen M. O'Neill
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